

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE)	
)	
v.)	ID#: 1206024845
)	
TYLER C. HARLEY, JR.,)	
)	
Defendant.)	

ORDER

Upon Defendant's Motion for Postconviction Relief
– *SUMMARILY DISMISSED.*

1. On January 14, 2013, Defendant pleaded guilty at final case review to robbery in the first degree, possession of a firearm during the commission of a felony, and disregarding a police signal.

2. On March 22, 2013, another judge sentenced Defendant to 20 years in prison, suspended after six mandatory years for probation at decreasing levels.

3. Defendant did not take a direct appeal from the plea or sentence. Instead, on March 14, 2014, Defendant filed this motion for postconviction relief

under Superior Court Criminal Rule 61. The motion concerns claims relating to both the plea and sentence.

4. The judge who accepted Defendant's plea has since retired. Accordingly, the Prothonotary referred the motion to the undersigned for preliminary review.¹

5. Meanwhile, on March 19, 2014, the then-New Castle County Criminal Assignment Judge appointed counsel for Defendant. The court's rules do not provide for split-referral of Rule 61 matters.² Nevertheless, on December 2, 2014, appointed counsel filed his memorandum in support of motion to withdraw as counsel for petitioner. The memorandum reviews Defendant's Rule 61 claims, concluding they are without merit.

6. On December 5, 2014, the court issued an order granting Defendant leave to file a further submission until and through January 15, 2015. Defendant did not make a further submission.

7. Based on the above, the court concludes that summary dismissal is appropriate because Defendant has abandoned the motion by failing to reply to his former-counsel's submission. Moreover, it continues to appear that Defendant's

¹ Super. Ct. Crim. Rule 61(d).

² See *State v. Lamarr*, No. ID 0804025366, 2015 WL 921106, at *1 (Del. Super. Jan. 6, 2015).

guilty plea was knowing, voluntary, and intelligent. Finally, as to Defendant's challenge to his conviction, the court agrees with the memorandum's conclusions.

Defendant alleges ineffective assistance of counsel because:

On July 24, 2012 I had a bail reduction hearing. My bail was increased from \$100,000 to \$426,000 due to a letter I wrote that was used as evidence. This letter was not included in my Rule 16 and was denied access to this essential paperwork by the prosecutor. I would like a copy of the document.

Assuming for purposes of argument Defendant's claim is factually true, it does not undermine Defendant's guilty plea.

8. As to Defendant's challenge to his sentence, he alleges:

I took a plea for 3-5 for Robbery 1st and 3-5 for PFDCF. I had no prior felony record. The sentencing guidelines for my charge as well as my lack of a felony record states that I should have received 2-5 for each charge. Instead of a minimum mandatory of 6 yrs. I should have received 4 yrs.

As a matter of law, Defendant's claims concerning what his sentence should have been are incorrect. Consistent with both what the court told him when he pleaded guilty and the law, Defendant's sentence was the legal, minimum/mandatory sentence. There is no reason to refer this matter to the sentencing judge for further consideration.

For the foregoing reasons, Defendant's motion for postconviction relief under Superior Court Criminal 61(d) is **SUMMARILY DISMISSED**. The Prothonotary **SHALL** notify Defendant.

IT IS SO ORDERED.

Date: April 28, 2015

/s/ Fred S. Silverman
Judge

oc: Prothonotary (Criminal)
pc: Sonia Augusthy, Deputy Attorney General
Robert M Goff, Jr., Esquire
Saagar B. Shah, Esquire
Tyler C. Harley, *pro se*, Defendant